

City of Lincoln, Illinois  
City Administrator  
Employment Agreement

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# Contents

<b>Introduction</b>	<b>4</b>
<b>Section 1: Term</b>	<b>4</b>
<b>Section 2: Duties and Authority</b>	<b>4</b>
<b>Section 3: Compensation</b>	<b>5</b>
<b>Section 4: Health, Disability and Life Insurance Benefits</b>	<b>5</b>
<b>Section 5: Vacation, Sick, and Other Leave</b>	<b>5</b>
<b>Section 6: Automobile</b>	<b>6</b>
<b>Section 7: Retirement</b>	<b>6</b>
<b>Section 8: General Business Expenses</b>	<b>6</b>
<b>Section 9: Termination</b>	<b>7</b>
<b>Section 10: Severance</b>	<b>7</b>
<b>Section 11: Resignation</b>	<b>8</b>
<b>Section 12: Performance Evaluation</b>	<b>8</b>
<b>Section 13: Hours of Work</b>	<b>9</b>
<b>Section 14: Ethical Commitments</b>	<b>9</b>
<b>Section 15: Outside Activities</b>	<b>9</b>
<b>Section 16: Indemnification</b>	<b>9</b>
<b>Section 17: Bonding</b>	<b>10</b>
<b>Section 18: Other Terms and Conditions of Employment</b>	<b>10</b>
<b>Section 19-20: Notices and General Provisions</b>	<b>10-11</b>
<b>Appendix 1 Separation of Employment and General Release</b>	<b>12</b>
<b>Appendix 2 ICMA Code of Ethics with Guidelines</b>	<b>15</b>

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# Introduction

This Agreement, made and originally effective on October 15, 2014 and subsequently amended effective on May 1, 2016, by and between the City of Lincoln of Illinois, a municipal corporation, (hereinafter called "Employer") and Clay Thomas Johnson, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member in good standing of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

## Section 1: Term

A. This agreement shall remain in full force and effect from October 15, 2014 until terminated by the Employer or Employee as provided in Section 9, 10, or 11 of this agreement.

The term of this agreement shall be for an initial period from October 15, 2014 to April 30, 2017. This Agreement shall automatically be renewed on its anniversary date for a 1 year term unless notice that the Agreement shall terminate is given at least 30 days before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

In the event that the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation and sick leave, car allowance paid in lump sum basis, plus continuation of all health and dental benefits for a period of four (4) months as outlined in Section 10 of this agreement.

## Section 2: Duties and Authority

A. Employer agrees to employ Clay Thomas Johnson as City Administrator to perform the functions and duties specified in Title 1, Chapter 20 of the Lincoln City Code and to perform other legally permissible and proper duties and functions without interference.

B. Employee is the chief administrative officer of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer's charter and/or ordinances and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the Mayor or governing body.

G. The Employee shall perform the duties of city administrator of the Employer with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

I. The Employee cannot be reassigned from the position of city administrator to another position without the Employee's express written consent.

J. The Employee or designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

## **Section 3: Compensation**

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$70,542.50, payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement may be amended at any time to reflect any salary adjustments that may be a result of a positive performance review in accordance with Section 12.

C. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 3.A. of the Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event, Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

D. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the level of benefits enjoyed by and/or available to department heads of the Employer as provided by the Employer's policies, Charter, ordinances, or personnel rules and regulations, or other practices.

## **Section 4: Health, Disability and Life Insurance Benefits**

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, dental and comprehensive medical insurance for the Employee at a minimum, equal to that which is provided to all other employees of the City of Lincoln.

B. The Employer shall reimburse the Employee for term life insurance premiums in an amount not to exceed \$500. The Employee shall name the beneficiary of the life insurance policy and shall provide proof of the existence of such insurance.

## **Section 5: Vacation, Sick, and Other Leave**

A. Upon commencing employment, the Employee shall be credited with 40 accrued vacation leave hours. In addition, upon reaching six (6) months of employment, the employee shall be credited with 80 vacation leave hours. Beginning January 1, 2016, Employee shall be credited with 120 hours of accrued vacation leave which shall continue upon the beginning of each calendar year thereafter and may carry over up to 80 hours to the following year. Employee shall accrue sick leave at a rate of eight (8) hours per month up to a maximum of 200 hours. Any sick leave hours accumulated in over 200 hours may be placed in a retirement reserve. Up to 1,920 hours (240 days) can be placed in the reserve to be used as allowed by IMRF.

## **Section 6: Automobile**

The Employee's duties require exclusive and unrestricted use of an automobile to be mutually agreed upon and provided to the Employee at the Employer's cost as outlined below.

### **Monthly Vehicle Allowance**

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$3,600 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

## **Section 7: Retirement**

The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf.

In addition to the Employer's payment to the state or local retirement system (as applicable) referenced above, Employer agrees to execute and keep in force all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or any other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan. Beginning May 1, 2016, the Employer agrees to contribute \$3,600 annually (or \$150 per pay period) to the Employee's ICMA-RC Section 457 deferred compensation plan on his behalf.

## **Section 8: General Business Expenses**

A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association (ICMA), the Illinois City/County Management Association (ILCMA), and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer. The Employee acknowledges that the budget and appropriations for FY2014-15 (May 1, 2014 through April 30, 2015) have been established and agrees to abide within the parameters of those budget and appropriation limitations.

B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the Illinois Municipal League Annual Conference, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer agrees to support, budget, and pay for expenses of the employee for becoming an ICMA Credentialed Manager recognizing that such a distinction is in the best interests of the City of Lincoln.

E. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The Employer will disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

F. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer encourages Employee to become an active member in local civic clubs or organizations:

G. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, internet connection at Employee's permanent residence, mobile phone/personal digital assistant and/or tablet computer for business and personal use, required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. The Employer shall pay \$100 per month to the Employee in order to maintain the cellular phone/tablet computer expenses necessary for modern communication purposes. Upon termination of Employee's employment, the laptop computer and any other such equipment purchased by the Employer shall remain the property of the Employer.

## **Section 9: Termination**

A. For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with Section 1-20-4 of the Lincoln City Code at a properly posted and duly authorized public meeting.
2. If the Employer, citizens or legislature acts to amend any provisions of the charter, code, enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute a breach of this agreement.
3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employer may declare a termination as of the date of the suggestion.
5. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

## **Section 10: Severance**

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

A. If the Employee is terminated; the Employer shall provide a minimum severance payment equal to six (6) months' salary at the then current rate of pay. This severance shall be paid in a lump sum basis or as agreed to by the Employer and the Employee.

B. The Employee shall also be compensated for all unused vacation leave and for any unpaid stipends on a pro rated basis up to the date of separation.

C. For a minimum period of six months following termination, the Employer shall pay the cost to continue the following benefits:

1. Health and dental insurance for the employee as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").

D. If the Employee is terminated because of a felony conviction or for cause, then the Employer is not obligated to pay severance under this section. "Cause" for purposes of this agreement shall be defined as:

1. Committed a material act of dishonesty or fraud.
2. Made a material misrepresentation to the City Council, its auditors or regulators.
3. Has appropriated or embezzled City funds, or committed larceny or theft of City property.
4. Committed a felony or crime involving moral turpitude.
5. Willfully disregarded a reasonable directive from or policy established by the City Council, or its related and affiliated entities.
6. Willfully engaged in misconduct or gross negligence in the performance of his duties.
7. Materially violated any representation or covenant in this agreement.

## **Section 11: Resignation**

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 30 days notice unless Employer and Employee agree otherwise.

## **Section 12: Performance Evaluation**

A. Employer shall annually review the performance of the Employee initially in April 2015, and then in each successive January thereafter subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee.

The final written evaluation should be completed and delivered to the Employee within 45 days of the initial formulary evaluation meeting.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, the new instrument (1) must be agreed to by the Employee in writing and (2), then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

D. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.



## **Section 13: Hours of Work**

As of the date of the execution of this Agreement, the work hours at City Hall are 9:00 am to 5:00 pm, Monday through Friday. It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

The schedule shall be appropriate to the needs of the Employer, and shall allow Employee to faithfully perform his or her assigned duties and responsibilities, and shall be no less than 40 hours per week.

## **Section 14: Ethical Commitments**

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein as Appendix 2. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

## **Section 15: Outside Activities**

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting, speaking, or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, speaking, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement. If any opportunity to consult, speak, or teach shall be presented to Employee, he shall receive approval from the Mayor of the City of Lincoln, and any compensation received as a result of these opportunities shall be considered outside the scope of this agreement.

## **Section 16: Indemnification**

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or not perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys' fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party.

The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this City of Lincoln, Illinois - City Administrator Employment Agreement

Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

## Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## Section 18: Other Terms and Conditions of Employment

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Lincoln, Illinois Charter, local ordinances or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the level of benefits that are enjoyed by or offered to department heads of the Employer as provided in the Charter, Code, Personnel Rules and Regulations, or by practice.

C. The Employer has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and unappropriated funds of the municipality in an amount sufficient to fund and pay all financial obligations of the Employer pursuant to this Agreement, including but not limited to, the Severance and other benefits set forth in Section 10.

## Section 19: Notices

Any notice required to be given with respect to this Agreement shall be in writing, and shall be deemed to have been given:

1. If delivered personally on that day, or
2. Two business days after being deposited with a nationally recognized overnight delivery service with instructions for next day delivery, or
3. One day after receipt of electronic confirmation if sent by facsimile or electronic mail, or
4. Five business days after deposit in mail, certified or registered, return receipt requested, with appropriate postage prepaid, addressed as follows:

EMPLOYER: City of Lincoln, Illinois  
700 Broadway Street  
Lincoln, Illinois 62656

EMPLOYEE: Clay Johnson  
123 S. College Street, Lincoln, IL 62656  
[claytjohnson@gmail.com](mailto:claytjohnson@gmail.com)

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

## Section 20: General Provisions

A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. **Effective Date.** This Amended Agreement, originally effective on October 15, 2014, shall become effective on February 16, 2016.

D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

E. **Precedence.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

City of Lincoln, Illinois

By: Martha R. Hersh Mayor

Executed this the 18<sup>th</sup> day of February, 2016.

Employee

Signature: Clay Johnson

Executed this the 18<sup>th</sup> day of February, 2016.

# Appendix 1

## SEPARATION OF EMPLOYMENT AND GENERAL RELEASE

This Separation of Employment and General Release Agreement ("Agreement") is made by and between the City of Lincoln, Illinois ("Employer") and Clay Johnson ("Employee").

**WHEREAS**, Employer has employed Employee as its City Administrator; however, the parties wish of all obligations due and owing Employee, Employer shall:

**WHEREAS**, The parties desire to set forth the terms and conditions governing Employee's separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between Employer and Employee, including without limitation, any and all claims arising out of or in any way related to Employee's employment with or separation from the Employer.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, Employer and Employee agree and state:

**1. TERMINATION OF EMPLOYMENT.** Upon their mutual agreement, Employee's employment shall terminate on \_\_, 20\_\_, which shall be Employee's final date of employment.

a. Pay Employee an amount equal to four (4) months of his current salary, subject to customary payroll deductions—to include Employee's portion of health and dental insurance premiums for four (4) months to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of Employee's employment or termination thereof.

**2. NO ADMISSION OF LIABILITY.** This Agreement is not an admission by Employee or Employer of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

**3. PAYMENT AND BENEFITS.** Employee shall receive his/her regular paycheck for the pay period ending \_\_, 20\_\_ on or before \_\_, 20\_\_. Employee shall receive on or before \_\_, 20\_\_ an additional payment to compensate for his accumulated leaves (vacation and floating holidays) and comp time, subject to customary payroll deductions.

As consideration for this Agreement and the release contained within, and in full and complete satisfaction:

b. Continue, and pay for, Employer's current health, dental and vision insurance coverages for four (4) months, ending on \_\_, 20\_\_.

[C. INCLUDE ANY OTHER CONSIDERATION, SUCH AS AGREEING NOT TO CONTEST UNEMPLOYMENT, ALLOWING THE EMPLOYEE TO PURCHASE HIS WORK LAPTOP, ETC.]

**3. SURRENDER AND VACATION OF EMPLOYER'S PROPERTY.** Upon execution of this Agreement, Employee shall deliver all Employers' property in his/her possession and further, shall vacate Employer's property.

**4. RELEASE AND WAIVER OF CLAIMS.** In consideration of the benefits to be provided to Employee pursuant to this Agreement, Employee—including his heirs and assigns—hereby irrevocably and unconditionally releases, acquits and discharges Employer and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement. Employee specifically acknowledges and agrees that he is releasing and giving up any right that he may now have under federal or state law or political subdivision thereof and any claims that he may now have or could have asserted against Employer.

Employee specifically agrees to release all claims that against Employer under many different laws, including but not limited to: *the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and Executive Order 11141, which prohibit age discrimination in employment*; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, and Executive Order 11246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; any other federal, state,

or local laws prohibiting employment or wage discrimination; the Fair Labor Standards Act of 1938 and state laws that regulate wage and hour matters; the Family and Medical Leave Act of 1993; the Employee Retirement Income Security Act of 1974; any federal, state, or local laws providing workers' compensation benefits, prohibiting retaliatory or wrongful discharge, otherwise restricting an employer's right to terminate employees, or otherwise regulating employment; claims for breach of contract, promissory estoppel, defamation, slander, or libel; claims for termination pay, severance, or other benefits; and any other federal, state, or local tort or contract claim. Employee expressly waives all rights that he might have under any law that is intended to protect him from waiving unknown claims.

Employer hereby irrevocably and unconditionally releases, acquits and discharges Employee from any and all from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

**5. REFERENCES AND NON-DISPARAGEMENT.** If it is necessary for Employer to provide a reference to a prospective employer, Employee agrees that he will direct the prospective employer to contact \_\_\_\_\_. Additionally, Employee and the elected officials agree that they shall not disparage or make negative comments about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

**6. REPRESENTATIONS AND WARRANTIES.** The undersigned parties hereby represent and warrant the following to the other:

a. Employee represents and warrants that: he is legally and mentally competent to sign this Agreement; he/she is the sole owner of any claims against the Employer; he/she has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and he/she presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.

b. Employee represents and warrants that he/she has not and will not file any complaints, charges or law-suits against Employer or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his/her employment, except Employee expressly reserves the right to file a claim for unemployment benefits. Employee further agrees to indemnify and hold Employer harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employer, arising out of any claim concerning the separation of employment that may hereafter be made by the Employee or any other party.

c. Employer represents and warrants that it has not and will not file any complaints, charges or lawsuits against Employee with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever relating to or arising out of Employee's employment with Employer or the separation of his employment from Employer. Employer further agrees to indemnify and hold the Employee harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employee, arising out of any claim arising from the separation of his employment that may hereafter be made by Employer or any other party.

d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.

e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision.

No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.

g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an original.

**7. JURISDICTION.** This Agreement shall be governed by the laws of the State of Illinois, and the Logan County District Court shall have exclusive jurisdiction of any disputes arising under this Agreement.

**8. BINDING EFFECT.** This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

**9. REVIEW & REVOCATION.** The parties acknowledge that Employee may revoke his/~~her~~ acceptance and execution of this Agreement at any time within seven (7) days of the date of his/~~her~~ execution of it. Any revocation shall be in writing and shall be effective upon timely receipt by the Employer's Attorney.

If the revocation is submitted by mail, the revocation must be postmarked before the expiration of the seven (7)-day revocation period, and must be sent by overnight mail or other method so that it is received at the above address no later than the next business day immediately following the expiration of the seven (7)-day period. Further, Employee represents that, before accepting and executing this Agreement, he/she was given a review period of twenty-one (21) days in which to consider it. Employee further represents that he: (a) took advantage of as much of this period as required to consider this Agreement before signing it; (b) agrees that they have carefully read the Agreement and the Release included herein; (c) fully understands it; and (d) is entering into it voluntarily. Employee represents that Employer encouraged him/~~her~~ to discuss this Agreement with an attorney of choice before signing it. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired without Employee having revoked acceptance of it.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

On behalf of the Employer of the  
City of Lincoln, Illinois:

Date:

Employer Attested by:

Date:

Employee:

Date:

On behalf of Employee:

Date:

## Appendix 2

### ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in September 2013.

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

**Tenet 1.** Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

**Tenet 2.** Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

#### GUIDELINE

**Advice to Officials of Other Local Governments.** When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

**Tenet 3.** Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

#### GUIDELINES

**Public Confidence.** Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

**Impression of Influence.** Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

**Appointment Commitment.** Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time, but once a bona fide offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

**Credentials.** An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

**Professional Respect.** Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

**Reporting Ethics Violations.** When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

**Confidentiality.** Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

**Seeking Employment.** Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

**Tenet 4.** Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

#### GUIDELINE

**Length of Service.** A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

**Tenet 5.** Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

## **GUIDELINE**

**Conflicting Roles.** Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

**Tenet 6.** Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

**Tenet 7.** Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

## **GUIDELINES**

**Elections of the Governing Body.** Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

**Elections of Elected Executives.** Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

**Running for Office.** Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

**Elections.** Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

**Elections relating to the Form of Government.** Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

**Presentation of Issues.** Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

**Personal Advocacy of Issues.** Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

**Tenet 8.** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

## **GUIDELINES**

**Self-Assessment.** Each member should assess his or her professional skills and abilities on a periodic basis.

**Professional Development.** Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

**Tenet 9.** Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

**Tenet 10.** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

## **GUIDELINE**

**Information Sharing.** The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

**Tenet 11.** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

## **GUIDELINE**

**Equal Opportunity.** All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.



**Tenet 12.** Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

#### **GUIDELINES**

**Gifts.** Members should not directly or indirectly solicit any gift or accept or receive any gift—whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form—under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In de minimus situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

**Investments in Conflict with Official Duties.** Member should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government administrator or prior to any official action by the governing body that may affect such investments.

**Personal Relationships.** Member should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

**Confidential Information.** Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

**Private Employment.** Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

**Representation.** Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

**Endorsements.** Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.